

A Guide to Estate Taxes

2002



Definitions



Filing and Payment Information



Department of Revenue Resources

*Applicable to dates of death on or after January 1, 1997
and prior to January 1, 2003*



Massachusetts Department of Revenue

Dear Family Member, Executor or Administrator:

In July 1992, the Massachusetts Legislature restructured the state's tax code by enacting provisions to phase down the Commonwealth's estate tax through annual increases in the amount of assets that can be left tax-free. For dates of death on or after January 1, 1997 and prior to January 1, 2003, Massachusetts imposes an estate tax based on the allowable federal estate tax credit for state death taxes. Under this system, no Massachusetts estate tax is due unless an estate is required to file a federal estate tax return. Thus, the Massachusetts filing threshold follows the federal filing threshold, due to increase as follows: \$600,000 for deaths in 1997; \$625,000 for deaths in 1998; \$650,000 for deaths in 1999; \$675,000 for deaths in 2000 and 2001; \$1,000,000 for deaths in 2002. Under this form of estate tax, commonly known as a "sponge tax," Massachusetts absorbs a portion of the federal estate tax.

Recent federal legislation, the Economic Growth and Tax Relief Reconciliation Act of 2001, changes the credit for state death taxes. The credit will be reduced by 25 percent for deaths occurring in 2002.

This guide outlines the estate tax responsibilities for settling the estates of decedents with dates of death on or after January 1, 1997 and prior to January 1, 2003. If you have additional questions about the estate tax law or need help with the laws pertaining to estates of decedents with prior dates of death, please call one of our estate tax specialists. We hope you find this guide useful and encourage you to contact us if you need further assistance.

Sincerely,



*Alan LeBovidge
Commissioner of Revenue*

The purpose of this publication is to provide taxpayers with general information about Massachusetts tax laws and Department of Revenue policies and procedures as of December 1, 2002. It is not designed to address all questions in detail, and taxpayers are encouraged to seek further guidance as described throughout this guide. Nothing contained within this publication supersedes, alters or otherwise changes any provisions of Massachusetts General Laws, Massachusetts Department of Revenue Regulations or Rulings or any other sources of the law.

3	From the Commissioner
5	Introduction
6	Definitions
8	Filing and Payment Information
15	Computation of Maximum Federal Credit for State Death Taxes
17	Commonly Requested Forms and Publications
19	Department of Revenue Resources

For dates of death occurring on or after January 1, 1997 and prior to January 1, 2003, Massachusetts changed from a separate system of estate taxation and joined the majority of states that adopted a “sponge tax” system. For these dates of death, the Massachusetts estate tax is imposed only on estates that are required to file a federal estate tax return. For 1997, an executor is required to file a federal estate tax return when the gross estate of a decedent, plus adjusted taxable gifts, is \$600,000 or more. For estates of decedents dying after 1997 and prior to January 1, 2003, the applicable exclusion amount is scheduled to increase from \$600,000 in 1997 to \$1,000,000 in 2002. Due to the federal taxable threshold, the vast majority of estates will be nontaxable for Massachusetts estate tax purposes.

The estate tax is a transfer tax on the value of the decedent's estate **before** distribution to any beneficiary.* Generally, the tax is the amount allowable as the credit for state death taxes on the federal estate tax return, U.S. Form 706. In effect, the estate taxes paid to Massachusetts may be used as an offsetting credit to reduce the estate taxes due to the federal government.

This guide explains the estate tax law that covers estates of those who died on or after January 1, 1997 and prior to January 1, 2003. For deaths before 1997, you should refer to DOR's 1996 estate tax guide or contact DOR's Customer Service Bureau at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089 for more information, since different rules apply.

**This is an important change from the previous inheritance tax, which covers estates of those who died before January 1, 1976; under the earlier system, the tax falls on the value of a decedent's property after it is received by any beneficiary.*

Administrator: A person appointed by the probate court to settle an estate of an individual who died leaving no will.

Code: For estate tax purposes for dates of death on or after January 1, 1997, Massachusetts adopts the Internal Revenue Code of the United States in effect on the date of death of the decedent, unless otherwise specified in the Massachusetts General Laws.

Credit for State Death Taxes: A credit allowed by the federal government that reduces the amount of federal estate tax paid by an estate. In order to qualify for the credit, the estate must pay the allowable amount to a state or states.

Domicile: A person's permanent and principal home.

Executor: The person named in the will and appointed by the probate court to execute the provisions of a will. **Please note:** If no one is appointed, the term includes the administrator of the decedent's estate. If there is no executor or administrator appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of any property of the decedent is considered an "executor" for Massachusetts estate tax purposes.

Federal Gross Estate: The value of property or interest therein as defined by the Internal Revenue Code in effect on the date of death of the decedent. The property may be vested or contingent, real or personal, tangible or intangible, jointly held or in the decedent's name alone and, wherever situated, beneficially owned by the decedent at the time of death.

Intangible Property: Property that does not have value in itself but represents value such as stocks, bank accounts, insurance and pensions.

Lien: A legal claim by the Commonwealth which automatically arises on all property taxable in the Massachusetts estate on the date of death.

Massachusetts Estate Tax: The amount of the federal credit for state death taxes, or the portion thereof, that is paid to Massachusetts and which is allowed as a credit against the federal estate tax.

Nonprobate Property: Property owned by or in which the decedent had an interest on the date of his or her death and which passes by provisions other than by will or the laws of intestacy such as assets held jointly or by a trust, life insurance not payable to the estate, etc.

Person in Possession: Any person in actual or constructive possession of any property of the decedent, including probate and nonprobate property such as jointly owned assets or life insurance.

Probate Property: All assets that were owned by the decedent in his or her name alone or as tenant in common on the date of his or her death and that pass by will or by the laws of intestacy.

Resident: Any person whose permanent and principal home is in the Commonwealth.

Sponge Tax: A term commonly used to describe an estate tax system whereby the amount of estate tax due a particular state is a portion of, or all of, the credit for state death taxes allowed by the federal government.

Tangible Personal Property: Property that is movable and has a visible existence and a value of its own, such as automobiles, boats, equipment, furniture, jewelry, coin collections and silver.



Federal gross estate
generally consists
of assets owned by
decedent at time of death

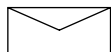
Who must file, and how is it done?

For dates of death on or after January 1, 1997 and prior to January 1, 2003, the executor of a decedent who was domiciled in Massachusetts must file a Massachusetts Resident Estate Tax Return (Form M-706) if a federal estate tax return (Form 706) must be filed. For dates of death on or after January 1, 1997, federal returns must be filed if the gross value of an estate, plus adjusted taxable gifts, is \$600,000 or more. For estates of decedents dying after 1997, the applicable exclusion amount is scheduled to increase as follows:

1998.	\$ 625,000
1999.	\$ 650,000
2000 and 2001.	\$ 675,000
2002.	\$1,000,000

The executor of the estate of a nonresident decedent who owned or transferred real estate or tangible personal property located in Massachusetts must use a Massachusetts Nonresident Estate Tax Return and Domicile Affidavit (Form M-706NR).

Special rules apply for citizens and noncitizens who are nonresidents of the United States and have property taxable in Massachusetts. Contact the Customer Service Bureau at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089 for instructions as Form M-706NR is not applicable to these estates.



Estate Tax Unit
PO Box 7023
Boston, MA 02204

Who is considered the executor for purposes of the Massachusetts estate tax?

Under Massachusetts estate tax law, the term "executor" is defined as the executor or administrator of the decedent, or if there is no executor or administrator appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of any property of the decedent.

When must the return be filed?

Where the gross estate exceeds the filing threshold, the return and tax payment are due nine months after the date of the decedent's death.

Can an extension of time to file be granted?

By submitting an Application for Extension of Time to File Massachusetts Estate Tax Return (Form M-4768), an extension of time to file may be granted for a reasonable period, provided the application is made on or before the due date of Form M-706 or Form M-706NR, and 100 percent of the estimated amount of tax is paid. Failure to pay at least 80 percent of the amount of tax finally determined to be due on or before the due date will void any extension of time to file, and the return will be subject to penalty. Interest is due on any unpaid tax from the original due date. (Please see the following page for more information on interest rates.)

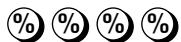
Can an extension of the payment due date be granted?

By filing an Application for Extension of Time to Pay Massachusetts Estate Tax (Form M-4768A), an extension of time to pay may be granted for a reasonable period, not to exceed six months. However, when an extension of time to pay is granted, interest on any unpaid tax accrues from the original due date. An extension is granted only for reasonable cause. An extension of up to three years from the due date may be granted upon a showing of undue hardship.

What happens if the return is late?

Failure to file a required return within nine months from the date of death or within an approved period of extension will result in penalties and interest being applied at the following rates:

- **Late Filing Penalty** — 1 percent per month (or fraction thereof) to a maximum of 25 percent of the tax as finally determined to be due.
- **Late Payment Penalty** — ½ of one percent per month (or fraction thereof) to a maximum of 25 percent of the tax reported as due on the return.
- **Interest** — The Massachusetts interest rate is equal to the federal short-term rate (which can change quarterly) plus 4 percentage points, compounded daily, both for underpayments and overpayments of state



Massachusetts interest
rate is equal to federal rate
plus 4 percentage points

taxes. If you wish to obtain information on these rates, please call DOR's Customer Service Bureau at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089. Rates are published each quarter in the **Taxpayer Advisory Bulletin**.

There are other consequences beyond these penalty and interest charges. At the time of death, a lien automatically arises by operation of law on all real estate owned by a decedent, either alone or jointly held. Failure to file a Massachusetts Resident or Nonresident Estate Tax Return (Form M-706 or Form M-706NR) will prevent the issuance of a Certificate Releasing Massachusetts Estate Tax Lien (Form M-792). A release of lien is necessary to obtain clear title and to sell or otherwise transfer ownership of the real estate.

When is a release of lien necessary?



Form M-792 is necessary
to obtain clear title to
real estate

In general, a Certificate Releasing Massachusetts Estate Tax Lien (Form M-792) is necessary for real estate owned jointly or as tenants by the entirety, real estate held in trust and other real estate that is not part of the probate inventory but is includible in the gross estate. Form M-792 may be required for probate real estate where there is a sale pending (or mortgage commitment), and no closing letter has been issued.

If the return has been filed previously, the taxpayer should forward a copy of the purchase and sale agreement (or mortgage commitment) and indicate that a return has been filed in order to expedite issuance of Form M-792.

Where the return has not yet been filed, an Application for Certificate Releasing Massachusetts Estate Tax Lien (Form M-4422) may be filed, provided all three of the following conditions exist:

- A Massachusetts estate tax will be due;
- The transaction is occurring sooner than nine months after the decedent's death; and
- There is an executed purchase and sale agreement (or mortgage commitment) for real estate which is includible in the decedent's estate.

The application must be filed with Form M-792 in triplicate, an attested copy of the deed, a copy of the purchase and sale agreement (or mortgage commitment) and payment of the estimated amount of the tax due. A completed Form M-706 (or Form M-706NR for nonresidents) still must be filed within nine months of the date of death.

If a Massachusetts estate tax return is not required to be filed, how can an executor obtain a release of lien on real estate?

For estates of decedents dying on or after January 1, 1997, an affidavit of the executor, subscribed to under the pains and penalties of perjury, recorded in the registry of deeds and stating that the gross estate of the decedent does not necessitate a federal estate tax return, shall release the gross estate of the estate tax lien.

Only in exceptional cases will DOR accept estate tax returns requesting a release of lien from estates not requiring a federal filing. The release will be furnished only if there is reason to believe it is needed to permit the transfer of property free from the lien.

What documents must accompany Forms M-706 and M-706NR?

Various documents must be filed with either return. Failure to file these documents will delay the return's processing. The major supporting documents required to be filed with the Massachusetts Resident or Nonresident Estate Tax Return (Form M-706 or Form M-706NR), where applicable, are:

- An executed copy of the federal estate tax return, Form 706, including all schedules and exhibits.
- A Federal Closing Letter submitted to DOR within two months of receipt. This includes both the federal letter of acceptance and line adjustments, if any. Copies of federal changes must be accompanied by an Application for Abatement/Amended Return (CA-6), or by an amended Form M-706 or amended for M-706NR, as appropriate. No Massachusetts Estate Closing Letter will be issued without a copy of the Federal Closing Letter.

- A Certificate Releasing Massachusetts Estate Tax Lien (Form M-792) in triplicate for each parcel of real estate where a release of lien is required. A copy of the deed or certificate of title, and the purchase and sale agreement (or mortgage commitment), if any, should be supplied.

How must property included in the estate be valued?

All property includible in the gross estate is reported at its fair market value on the date of the decedent's death or on the alternate valuation date six months later. Special Internal Revenue Service rules apply to the valuation of farm property. All values shall be as finally determined for federal estate tax purposes. For more information on these rules, please contact the Customer Service Bureau at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089.

What property must be included in the gross estate?

The gross estate for federal estate tax purposes includes all property in which the decedent had an interest. It also includes:

- Certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth;
- Annuities;
- Joint estates with right of survivorship;
- Tenancies by the entirety;
- Life insurance proceeds (even though payable to beneficiaries other than the estate);
- Property over which the decedent possessed a general power of appointment;
- Dower or curtesy (or statutory estate) of the surviving spouse; and
- Community property to the extent of the decedent's interest as defined by applicable law.

How is the Massachusetts estate tax computed?

Effective for dates of death on or after January 1, 1997 and prior to January 1, 2003, the Massachusetts estate tax for the estates of residents and nonresidents is computed with reference to the allowable federal estate tax credit for state death taxes. Estates pay to Massachusetts the amount of, or a portion of, the credit for state death taxes allowable to a decedent's estate under Code section 2011, as amended and in effect as of the date of the decedent's death. The credit for state death taxes is computed on the federal estate tax return, Form 706, and then entered on the Massachusetts Resident or Nonresident Estate Tax Return (Form M-706 or Form M-706NR).

If an estate consists solely of property subject to Massachusetts estate taxation, it pays to Massachusetts an amount equal to the federal credit for state death taxes. The federal rate table used to compute the credit for state death taxes is set out on page 15.

In the case of a resident of Massachusetts who owned or transferred real estate or tangible personal property located outside of Massachusetts, Massachusetts grants a credit for estate or inheritance taxes properly paid to other states. In these cases, the Massachusetts estate tax is the amount of the federal credit for state death taxes minus the lesser of:

- (1) The total of the amount of all estate, inheritance, legacy and succession taxes actually paid to other states for property owned by the decedent or subject to those taxes in connection with the estate; or
- (2) The amount equal to the proportion of the allowable credit as the value of the properties taxable by other states bears to the value of the entire federal gross estate wherever situated. This calculation is made as follows:

$$\frac{\text{Gross value of property taxed by other states}}{\text{Federal gross estate}} \times \text{Credit for state death taxes}$$

In the case of a nonresident of Massachusetts who owned or transferred real estate or tangible personal property located in Massachusetts, use the Massachusetts Nonresident Estate Tax Return and Domicile Affidavit (Form M-706NR) to compute the amount payable to Massachusetts. The amount of the Massachusetts nonresident estate tax is the proportion of the allowable credit from the federal estate tax return that the gross value of the Massachusetts property bears to the entire federal gross estate wherever situated. This calculation is made as follows:

$$\frac{\text{Gross value of real property and tangible personal property in Massachusetts}}{\text{Federal gross estate}} \times \text{Credit for state death taxes}$$

Can the tax liability be adjusted after Form M-706 or Form M-706NR is filed?

A taxpayer who believes that the assessed tax liability is excessive may apply to the Commissioner of Revenue for an abatement within three years from the due date of the return without regard to any extension of time to file, within two years from the date the tax was assessed or within one year from the date the tax was paid, whichever occurs latest.

All essential information must be filed with DOR's Customer Service Bureau on an Application for Abatement/Amended Return (Form CA-6). If you would like to request a hearing, the request must be indicated on the abatement application. The taxpayer will be notified in writing of the Commissioner's decision. If the abatement is denied in whole or in part, the taxpayer may, within 60 days from the notice of denial, appeal to the Appellate Tax Board on all issues or to the probate court on all issues except valuation.



Any hearing request should be indicated on Form CA-6

The following table is used to compute the credit for state death taxes under Internal Revenue Code Section 2011.

Adjusted taxable estate*					
From	To	Credit	+	% of	Excess Over
\$ 0	\$ 40,000	\$ 0		0.0	\$ 0
40,000	90,000	0		0.8	40,000
90,000	140,000	400		1.6	90,000
140,000	240,000	1,200		2.4	140,000
240,000	440,000	3,600		3.2	240,000
440,000	640,000	10,000		4.0	440,000
640,000	840,000	18,000		4.8	640,000
840,000	1,040,000	27,600		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8.0	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12.0	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000	—	1,082,800		16.0	10,040,000

* The "adjusted taxable estate" used in determining the allowable credit for state death taxes in the above table is the federal taxable estate (total federal gross estate minus allowable federal deductions) less \$60,000.

No credit for state death taxes is allowable if the "adjusted taxable estate" is \$40,000 or less.

This chart is applicable for dates of death from 1997 through 2001. The credit for state death taxes will be reduced by 25 percent for deaths occurring in 2002.

Example: If the adjusted taxable estate is \$110,000, the maximum federal credit for state death taxes is \$720. It is computed as follows:

- (1) An adjusted taxable estate of \$110,000 is within the range of numbers on the third line: \$90,000 to \$140,000.*
- (2) The credit on the first \$90,000 is \$400.*
- (3) The credit on any amount in excess of \$90,000 and up to \$140,000 is computed at the rate of 1.6 percent.*
- (4) In this example, \$20,000 is in excess of \$90,000 (\$110,000 less \$90,000).*
- (5) The credit on \$20,000 is \$320 (\$20,000 x .016).*
- (6) The maximum credit for state death taxes on the federal estate tax return is \$720 (\$400 plus \$320).*

The Massachusetts estate tax is equal to the amount of the maximum federal credit for state death taxes. If \$720 is paid to the Commonwealth of Massachusetts, then the same amount is a credit on the federal estate tax return. The credit for state death taxes is allowed as a credit on the federal estate tax return only if it is actually paid to a state.

The credit for state death taxes will be reduced by 25 percent for deaths occurring in 2002.



*DOR's Fax on Demand
(617) 887-1900
+ fax code number*

DOR offers a number of forms and publications on various state tax issues. Most are available by visiting the DOR website at www.mass.gov/dor or by calling DOR's main information lines at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089. Many of the documents below also are available through DOR's Fax on Demand system. Please call (617) 887-1900 using the handset and the keypad of your fax machine for a complete menu, or use the code number following the document title below. Only forms followed by a fax code number may be obtained through Fax on Demand.

Form Number	Title/Fax Code Number
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Estate Tax Form Menu/3

CA-6 *Application for Abatement/Amended Return/326*

M-706 *Massachusetts Resident Estate Tax Return for dates of death on or after January 1, 1997 and prior to January 1, 2003/459*

M-706NR *Massachusetts Nonresident Estate Tax Return and Domicile Affidavit for dates of death on or after January 1, 1997 and prior to January 1, 2003/458*

M-792 *Certificate Releasing Massachusetts Estate Tax Lien/467*

M-4422 *Application for Certificate Releasing Massachusetts Estate Tax Lien for dates of death on or after January 1, 1997 and prior to January 1, 2003/465*

M-4768 *Application for Extension of Time to File Massachusetts Estate Tax Return/464*

M-4768A *Application for Extension of Time to Pay Massachusetts Estate Tax/463*

Publication Title/Fax Code Number

A Guide to the Department of Revenue: Your Taxpayer Bill of Rights/3005

Guide to Filing Your Massachusetts Income Taxes/3010

A Guide to Withholding of Taxes on Wages/3007

Should You Be Paying Estimated Taxes?/3008

A Guide to Sales and Use Tax/3009

A Guide to Sales Tax on Meals/3012

A Guide to Estate Taxes (Applicable to dates of death prior to January 1, 1997)/3011

A Guide to Estate Taxes (Applicable to dates of death on or after January 1, 1997 and prior to January 1, 2003)/3013

A Guide to Estate Taxes (Applicable to dates of death on or after January 1, 2003)/3014

Taxpayer Advisory Bulletin is published quarterly with updates on legislative, legal and Departmental decisions and is available on the DOR website at www.mass.gov/dor.

DOR Regulations, Technical Information Releases, Directives and Letter Rulings are prepared on general tax issues as well as specific taxpayer inquiries and are available on the DOR website and Fax on Demand system, or by calling DOR's Rulings and Regulations Bureau at (617) 626-3250. Copies also are published in the **MASSTAX Guide**.

Registration Packet contains registration materials for business taxpayers, tax information, sample forms and informational guides, and is available by calling (617) 887-6400.

MASSTAX Guide contains five volumes covering all state taxes and DOR administrative procedures; it is available for purchase through West Group (1-800-328-9352) or for reference at many law libraries and at the State House Library.

What kind of help is available?



If you have questions,
call DOR's main
information lines or
visit the Estate Tax Unit

The instructions in the Department of Revenue's tax forms should provide answers to most taxpayer questions. Personal estate tax assistance is available by visiting the Estate Tax Unit at 200 Arlington Street, Chelsea, MA, Monday through Friday from 9:00 a.m. to 12:00 p.m. or by calling DOR's main information lines at (617) 887-MDOR or 1-800-392-6089, Monday through Friday from 8:45 a.m. to 5:00 p.m. For help in one of the following specific areas, please call the appropriate number below.

Case Status (617) 887-6930	Estate Assessing (617) 887-6930
Fiduciary (617) 887-MDOR	Release of Lien (617) 887-6930
Forms (617) 887-6940	Taxpayer Assistance (617) 887-MDOR

DOR also issues a number of useful publications on various state tax issues. These publications include: tax-specific guides written in question and answer format such as **A Guide to the Department of Revenue: Your Taxpayer Bill of Rights**; a quarterly newsletter, the **Taxpayer Advisory Bulletin**; and public written statements that explain the Commonwealth's tax laws in detail.

Where to get forms and publications



To obtain Massachusetts estate tax forms by phone, call the Estate Tax Unit's forms line at (617) 887-6940. To obtain most other Massachusetts forms and publications by phone, call the Department's main information lines at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089. Please note that many forms and publications are available 24 hours a day by calling the Department's automated forms request system at the numbers listed above.



Many Massachusetts tax forms and publications also are available via the Department's website at www.mass.gov/dor.



Certain forms and publications can be obtained through DOR's Fax on Demand system. A list of commonly requested forms and publications and their fax codes appears on pages 17 and 18. For a complete Fax on Demand menu, please dial (617) 887-1900 using the handset and the keypad of your fax machine.

Department of Revenue

*Toll-free in Massachusetts: **1-800-392-6089***

Online: www.mass.gov/dor